IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

CRP.No. 637 of 2007()

CMA.29/2006 OF SUB COURT,NEYYATTINKARA
AGAINST THE ORDER IN I.A.5305/05 IN
OS.345/2003 OF II ADDL.M.C.,NEYYATTINKARA
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REVN. PETITIONERS: RESPONDENTS/COUNTER PETITIONER/PLAINTIFF:

AMGAJAN, S/O. GOVINDAN,
AGED 69 YEARS, PADMAVILASOM VEEDU, KALLAMPALLI,
KUNNATHU MURI, CHERUVAKKAL VILLAGE,
THIRUVANANTHAPURAM TALUK.

BY ADV. SRI.R.S.KALKURA
SRI.M.S.KALESH
SRI.HARISH GOPINATH

RESPONDENTS: APPELLANTS/PETITIONERS/DEFENDANTS 1 TO 4:
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1. ASOKAN, S/O. NADESAN,
AGED 48 YEARS, MALAYANKUZHI, VADAKKUMKARA PUTHEN VEEDU, MARANALLOOR DESOM & VILLAGE.

2. SOBHANA, AGED 40 YEARS,
RESIDING AT MALAYANKUZHI,VADAKKUMKARA PUTHEN VEEDU MARANALLOOR DESOM & VILLAGE.

3. BRAHMAJITH, AGED 24 YEARS,
RESIDING AT MALAYANKUZHI, VADAKKUMKARA PUTHENVEEDU MARANALLOOR DESOM & VILLAGE.

4. AYSWARYA, AGED 22 YEARS,
MALAYANKUZHI VADAKKUMKARA PUTHEN VEEDU, MARANALLOOR DESOM & VILLAGE.

BY

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 17/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J

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C.R.P. No.637 OF 2007

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Dated this the 17th day of July, 2007

O R D E R

This revision petition is preferred against the order in C.M.A.No.29 of 2006 of the Sub Court, Neyyattinkara. It was a case where the defendants were set ex parte and the trial court dismissed the application and the appellate court reversed it and granted an opportunity to the defendants to put forward his contention on merits. At the outset, I may like to state that there has been some negligence on the part of the defendants. Once the case was set ex parte and it was allowed by the court and when it came for the second time also it had the same fate and thereafter the application for setting aside ex parte decree was dismissed. As early as from 1968 onwards, this court had taken a view that the broad principle of natural justice that informs our judicial institution is that a litigant should not be deprived of a hearing unless there has been something equivalent to misconduct or gross negligence on his part. In the decision reported in ***Sreedhara Kurup v. Mickel(1968 KLT 599)***, this court held that it is largely a matter of wise discretion to be exercised by the Court bearing in mind the wholesome principle that the right of a party to be heard should be

negatived only if there is gross negligence or gross carelessness and that if some steps have been taken and application for restoration has been made with some diligence and some evidence adduced making out a sufficient cause for absence, restoration should be ordered, minor misconduct or laches being corrected by the common curative of costs. It is true that it is the second application for setting aside ex parte decree. But at the same time, it has been filed within the statutory period and it has been prosecuted and the court below had used its discretion in favour of the petitioner therein and enabled him to contest the case on merits.

Therefore I am not inclined to interfere with the said discretion used by the appellate court. But, at the same time, there must be an end to litigation. Therefore the trial court is directed to dispose of the matter, as expeditiously as possible, within a time frame of 3 months from today and the revision petitioner is directed to produce a copy of this order before the trial court for compliance.

C.R.P. is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-